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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/900,241	07/06/2001	Andrew Kerr	Kerr-5	5997
1218	7590	04/20/2004	EXAMINER	
CASELLA & HESPOS 274 MADISON AVENUE NEW YORK, NY 10016			BLANCO, JAVIER G	
			ART UNIT	PAPER NUMBER
			3738	
DATE MAILED: 04/20/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

09/900,241

**Applicant(s)**

KERR, ANDREW

**Examiner**

Javier G. Blanco

**Art Unit**

3738

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 12 March 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 3, 4, and 25-27 is/are pending in the application.
- 4a) Of the above claim(s) 4 and 27 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 3, 25 and 26 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on March 12, 2004 has been entered.

### ***Drawings***

2. This application has been filed with informal drawings, which are acceptable for examination purposes only. Formal drawings will be required when the application is allowed.

### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 25, 26, and 3 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Anderson et al. (US 5,800,526 A).

As seen in Figures 9, 10, and 12, Anderson et al. disclose an endovascular stent/graft assembly comprising stent means (stent 56 and stent 58) having opposite first and second axial ends, and graft means (graft 52) having first and second axial ends directly contacting first and

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second relatively healthy sections of a blood vessel (graft is bridging an aneurysm). The first axial end of graft 52 is fixedly connected with the second axial end of stent 58 for achieving a substantially end-to-end connection (see figures; see entire document). Said end-to-end connection may include overlapping (see Figures 9, 10, and 12) and the use of an adhesive (see column 11, lines 1-10 and lines 57-60). Said end-to-end connection is also disclosed/described by Anderson et al. as an end-to-end connection without overlap (= “butt joint”: see column 11, lines 10-14). It should be noted that Merriam-Webster dictionary defines “butt joint” as *“a joint made by fastening the parts together end-to-end without overlap and often with reinforcement”* (this was addressed in the last Office Action). Anderson et al. further disclose/describe said “butt joint” connection as having all of the stent extending out of the graft (see column 11, lines 10-14). Said teaching further corroborates/validates the dictionary definition of “butt joint”.

With regards to newly added claim limitation: “whereby the end-to-end connection without overlap enables a smaller cross-section than a connection with overlap so that the endovascular stent/graft assembly can be introduced more easily into the blood vessel”, it should be noted:

- a. Anderson et al. disclose in column 10, lines 2-5 and lines 8-10 the stent/graft assembly as having a small cross-section for ease of introducing into a blood vessel.
- b. Given that Anderson et al. disclose/describe a stent/graft assembly comprising the claimed limitations set forth in claims 25, 26, and 3 (specifically the “butt joint” connection between the stent(s) and the graft), it will be inherent that it will perform as indicated in the newly added functional language. Therefore, the “butt joint” connection of the stent/graft assembly of

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Anderson et al. will enable a smaller cross-section allowing the stent/graft assembly to be introduced more easily into the blood vessel.

c. Claims in a pending application should be given their broadest reasonable interpretation. *In re* Pearson, 181 USPQ 641 (CCPA 1974).

### ***Response to Arguments***

5. Applicant's arguments filed March 12, 2004 have been fully considered but they are not persuasive. The Response to Applicant's arguments have been incorporated with the 102(b) rejection.

### ***Conclusion***

6. All claims are drawn to the same invention claimed in the application prior to the entry of the submission under 37 CFR 1.114 and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the application prior to entry under 37 CFR 1.114. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action after the filing of a request for continued examination and the submission under 37 CFR 1.114. See MPEP § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period

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will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

7. This application contains claims 4 and 27 drawn to an invention nonelected with traverse in Papers No. 6 and 15. A complete reply to the final rejection must include cancellation of nonelected claims or other appropriate action (37 CFR 1.144) See MPEP § 821.01. This was addressed in the Final Rejection mailed out July 30, 2003 and also in the last office action (RCE: Final Rejection; mailed out December 17, 2003).

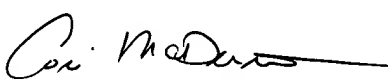
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Javier G. Blanco whose telephone number is 703-605-4259. The examiner can normally be reached on M-F (7:30 a.m.-4:00 p.m.), first Friday of the bi-week off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Corrine McDermott can be reached on 703-308-2111. The fax phone numbers for the organization where this application or proceeding is assigned is 703-872-9306 for regular communications and After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0858.

JGB

April 16, 2004



CORRINE McDERMOTT  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3700